

No. 26-11558-H

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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JERALD W. TILTON, MARIA A. TILTON, GINA B. HARDING,  
ROBERT C. ZIEL, EZEKIAL P. STAGGS, HARLAND D.  
HARRINGTON, RACHEL G. HARRINGTON, LISA M. GARDELLA,  
JEDEDIAH L. MESEL, GEORGE PIDGEON,

Plaintiffs—Appellants,

*v.*

HONORABLE SANDRA UPCHURCH, in her official capacity as  
Circuit Judge for the Circuit Court of the 7th Judicial Circuit in and for  
Flagler County,

Defendant—Appellee.

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On Appeal from the United States District Court  
for the Middle District of Florida  
In Case No. 3:26-cv-652-WWB-LLL, Honorable Wendy W. Berger

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**PLAINTIFFS—APPELLANTS PRINCIPAL BRIEF**

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Jerald W. Tilton, et al. v. Hon. Sandra Upchurch, in her official capacity  
as Circuit Judge for the Seventh Judicial Circuit in and for Flagler  
County  
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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Plaintiffs-Appellants hereby certify that the following individuals  
and entities have an interest in the outcome of this case:

Berger, Wendy W., Hon., District Court Judge

Black, David W.

Coastal Family Church, Inc.

Flagler Square-JAX, Inc.

Frank Weinberg Black, P.L.

Gardella, Lisa M.

Gourlay, George

Harding, Gina B.

Harrington, Harland D.

Harrington, Rachel G.

Hill, Avery B.

Liberty Counsel, Inc.

Mesel, Jedediah L.

Mihet, Horatio G.

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Pidgeon, George

Roderick James Palmer, Trustee of the 2501 Moody Blvd. Land Trust  
Agreement, Dated February 7, 2025

Schmid, Daniel J.

Staggs, Ezekial P.

Staver, Anita L.

Staver, Mathew D.

Tilton, Jerald W.

Tilton, Maria A.

Upchurch, Sandra, Hon. Circuit Judge

Wagner, Leanne

Ziel, Robert C.

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**STATEMENT REGARDING ORAL ARGUMENT**

Plaintiffs-Appellants respectfully request that the Court grant oral argument in this appeal because it would assist the Court in understanding the novel and complex issues surrounding Appellants' entitlement to a preliminary injunction against a state-court judge's temporary injunction prohibiting their religious worship services, speech, and assembly, and because the appeal involves novel questions surrounding the determination and adjudication of whether injunctive relief is available against a state-court judge under 42 U.S.C. §1983 when all other forms of reliefs are inadequate to redress their injuries.

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**STATEMENT OF SUBJECT-MATTER AND APPELLATE  
JURISDICTION**

Plaintiffs–Appellants filed their complaint in the United States District Court for the Middle District of Florida on March 25, 2026, App. 004, and filed the operative First Amended Verified Complaint on April 2, 2026, which raised claims under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983. App. 021–081. The district court had jurisdiction under 28 U.S.C. §§1331 and 1343. The district court denied Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction on April 3, 2026, App. 088, and Plaintiffs–Appellants timely filed their notice of appeal on May 4, 2026. App. 093. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1).

Appellants hereby incorporate by reference the Jurisdictional Brief filed simultaneously herewith at the order of the Court.

**STATEMENT OF THE ISSUES PRESENTED FOR APPEAL**

1. Whether a non-party plaintiff who is subject to a state-court injunction prohibiting religious worship services, speech, and assembly under the threat of contempt may seek a preliminary injunction against the state-court judge who issued the presumptively unconstitutional

prior restraint where—as here—a declaratory judgment would provide no redress for the injuries.

2. Whether a non-party plaintiff who sues a state-court judge in her official capacity under 42 U.S.C. §1983 and pleads declaratory relief and injunctive relief as alternative statements of relief under Fed. R. Civ. P. 8(d) is precluded from contending that declaratory relief is inadequate and therefore unavailable to redress the injuries.

3. Whether a state-court injunction prohibiting non-parties to an injunction from gathering together or meeting for religious worship services, speech, and assembly is an unconstitutional prior restraint on speech that violates the First Amendment.

4. Whether a state-court injunction prohibiting non-parties to an injunction from gathering together for religious worship services, speech, and assembly while permitting gatherings of a non-religious nature violates the Free Exercise Clause of the First Amendment for lack of neutrality and general applicability.

5. Whether a state-court injunction prohibiting non-parties to the injunction from gathering together for religious worship services,

speech, and assembly while permitting gatherings of a non-religious nature violates the Establishment Clause.

## **STATEMENT OF THE CASE**

### **I. Factual Background**

#### **A. The state-court suit and state-court injunction.**

Coastal Family Church purchased Unit 1 in the Flagler Square condominium and began using the property as a church for religious worship services. App. 047, ¶89. A fellow owner of units in the same complex filed suit in state court and sought a temporary injunction against Roderick Palmer as trustee of the land trust that purchased the facility. App. 047, ¶90. The state-court plaintiff made its hostility toward religious assemblies known by saying that “a shopping center that entertains this use is usually at the end of its useful life, as no retailers appreciate being paired with this type of tenant.” App. 047, ¶91. The fellow owner further made its hostility known by saying that “a house of worship . . . creates a dark hole in the center” of the complex. App. 047, ¶91. The state-court proceeding plaintiff noted that it was opposed *only* to religious assemblies because it allows non-religious assemblies and gatherings to continue unabated.

The same declaration upon which the state-court plaintiff brought its claims prohibits banquet halls, auditoriums, and any other place of public assembly, as well as consignment shops and Bingo parlors. App. 047, ¶91. Despite that restriction, the state-court plaintiff to this day currently permits the Fraternal Order of Police Lodge #171 and Junque in the Trunk – two tenants whose operations facially violate the same purported restrictions. App. 047, ¶92. Lodge #171 openly advertises that it hosts public assemblies, leases their facility for public assemblies, and even conducts weekly Bingo Nights open to the public. App. 048, ¶93. The Lodge’s website states: “We offer our lodge for rental to various organizations making it an ideal space for Bingo events, HOA meetings, NRA Classes, and Law Shield classes.” App. 048, ¶94. The same restrictions that prohibit public assembly also prohibit the operation of consignment stores at Flagler Square, yet Junque in the Trunk advertises itself as a consignment store. App. 048, ¶95 (“Welcome to Junque in the Trunk, an upscale consignment and resale store in picturesque Flagler Beach, Florida.”). The remaining tenants include a restaurant, legal office, and State of Florida Tax Collector’s office – *none*

*of which are retail stores* and none of which are permitted under the state-court plaintiff's purported framing of the restrictions. App. 048, ¶96.

The state-court plaintiff has also, itself, “either hosted, or allowed others to host Flea Markets, Car Shows, and other public assemblies in the Flagler Square parking lot.” App. 048, ¶97. The state-court plaintiff has engaged in a selective, unreasonable, discriminatory, and thus, arbitrary, enforcement of the Declaration's restrictions, targeting state-court Defendant Palmer's religious exercise, while ignoring other tenants' non-religious gatherings purportedly in violation of the same Declaration. App. 048, ¶98. *It was this action that gave rise to the state-court injunction that prohibits Appellants—although not named parties or participants in the state-court proceedings—from gathering for religious worship services and it is infused with the same unconstitutional bias as state-court plaintiff's quest.*

On January 22, 2026, Judge Upchurch issued a temporary injunction (“state-court injunction”) prohibiting Appellants' pastor from utilizing his church property as a place of “public assembly” and enjoining him from allowing anyone (which includes Appellants, who are non-parties in the state-court proceeding) from gathering on the Church

property for a “public assembly” during the course of litigation in the state-court proceedings. App. 049, ¶99; *see also* App. 083–085. Appellants have every right under law to peaceably assemble as invitees at the Church for religious worship services but are only prohibited from doing so because of the state-court injunction. Upon the state-court request for a temporary injunction against Appellants’ Church, the state court entered the injunction that is the subject of this action. It states:

Until resolution of this case Defendant is enjoined effective immediately from utilizing Unit 1 as a place of *public assembly and is prohibited from allowing public assemblies put on by any entity* to occur there. Defendant may elect to allow the property to be used for *administrative purposes* or for office space so long as the restrictive covenants are being followed. Also effective immediately, Defendant is enjoined from proceeding with any construction or modification to Unit 1 one [sic] which would facilitate public assemblies. (emphasis added)

App. 083–085.

The state-court injunction acknowledges that other occupants are violating the purported restrictions but permits those non-religious violations to continue. App. 049, ¶100. The state-court injunction does not define “public assembly.” App. 049, ¶101. The declaration and restrictive covenants upon which the state-court injunction is based do

not define “public assembly.” App. 049, ¶102. No local statute, ordinance, or regulation defines “public assembly.” App. 049, ¶103.

Appellants are left with no definition of the operative term of a state-court injunction that subjects them and their pastor to contempt for violating that state-court injunction, even though Appellants are not parties to that injunction. App. 050, ¶104. Appellants have no idea if two people gathering for prayer in the unit constitutes a public assembly, or how many people are required to gather for it to somehow become a public assembly. App. 050, ¶105. The state-court injunction leaves Appellants guessing as to its meaning. App. 050, ¶106. The state-court injunction unquestionably applies to Appellants and restrains and enjoins the exercise of their First Amendment rights despite the fact that they are not parties to the state-court proceedings. App. 050, ¶107. The non-party Appellants can gather for non-religious or “administrative” meetings but not for religious meetings. The state-court injunction is so broad as to cover non-parties, just as in *Cheffer v. McGregor*, 6 F.3d 705 (11th Cir. 1994); to cover First Amendment activities of parties not before the Court, just as in *Cheffer*; and subjects non-parties to the threat of

contempt for violation of its undefined terms, just as in *Cheffer*. App. 050, ¶108.

Just as the plaintiffs in *Cheffer* had a constitutional right to engage in speech in a traditional public forum, Appellants here have a First Amendment right to gather in a building owned and operated by their Church to engage in religious assembly, religious worship services, and religious expression. App. 050, ¶109. Just as in *Cheffer*, the only thing that prohibits them from engaging in those constitutionally protected activities is the overbroad state-court injunction that restrains the constitutionally protected activity of parties not before the state court. App. 050, ¶110. Absent the state-court injunction, Appellants would be free to engage in their constitutionally protected right to religious worship services, speech, and assembly.

**B. Appellants' sincerely held religious beliefs and the state-court injunction substantial burden on them.**

On Saturday, January 24, 2026, as a result of the state-court injunction, the Church was forced to inform religious congregants that a Florida court had prohibited them from gathering together on Sunday for religious services. App. 051, ¶111. On Sunday, January 25, 2026, as a result of the state-court injunction, Coastal Family Church's religious

services were canceled. App. 051, ¶112. Appellants’ religious worship plainly qualifies as the exercise of religion. App. 051, ¶113. The state-court injunction is an order that directly affects non-parties such as Appellants, thus prohibiting them from gathering to worship or for any religious purpose. App. 051, ¶114. The state-court injunction substantially burdens Appellants’ sincerely held religious practices – and plainly so. App. 051, ¶¶115–16. “Religion motivates the worship services.” *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 613 (6th Cir. 2020) (emphasis added).

Appellants believe in The Great Commission to go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to observe all that is commanded by God. App. 051, ¶117 (quoting *Matthew* 28:19-20 (ESV)). The Great Commission requires that Appellants evangelize the Flagler Beach community, in Flagler Square, in Unit 1, and to worship as a single church body. App. 051, ¶118 (quoting *1 Corinthians* 12:12-13 (ESV) (“For just as the body is one and has many members, and all the members of the body, though many, are one body, so it is with Christ. For in one spirit

we were all baptized into one body – Jews or Greeks, slaves or free – and all were made to drink of one Spirit.”.)

Appellants’ sincere religious beliefs compel them to meet in person for worship, and Unit 1, where Appellants previously met as invitees for worship, is large enough to lawfully house its religious gathering. App. 052, ¶119 (quoting *Hebrews* 10:24-25 (ESV) (“And let us consider how to stir up one another to love and good works, not neglecting to meet together, as is the habit of some, but encouraging one another, and all the more as you see the Day drawing near.”).) Moreover, if Appellants meet for “administrative” purposes and then concludes that meeting with Bible study, prayer, or worship songs, is the permissible “administrative” purpose transformed into an impermissible “public assembly”? Appellants have no idea. App. 052, ¶119.

Appellants sincerely believe, as is recorded in *Mark* 16:15 (ESV), Jesus dispelled all geographic boundaries associated with evangelism commanding the apostles, “Go into all the world and proclaim the gospel to the whole creation.” App. 052, ¶120. Courts define “a substantial burden on free exercise” as “one that either compels the religious adherent to engage in conduct that his religion forbids or forbids him to

engage in conduct that his religion requires.” *Warner v. City of Boca Raton*, 887 So.2d 1023, 1033 (Fla. 2004) (citing *Mack v. O’Leary*, 80 F.3d 1175, 1178 (7th Cir. 1996)). The Supreme Court has made clear that where the government permits other activities to proceed, but restricts religious exercise, there is a substantial burden on free exercise. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Appellants suffer from the latter ailment – a prohibition of conduct their faith compels, coupled with disparate treatment that further defines the state-court injunction as a substantial burden. App. 054, ¶123.

*Beginning on February 15, 2026, and continuing every Sunday, Appellants have been forced to cease in-person religious services and stand outside the Church to inform congregants, new visitors, and possibly even those exploring Christianity for the first time, that a Florida court order prohibits a “public assembly,” which has been applied to include religious worship.* App. 053, ¶124.

To make matters even worse, the state-court injunction descended into what can only be described as a modern version of Sophocle’s

*Antigone*.<sup>1</sup> App. 053, ¶125. That is, in early February, a congregant of Coastal Family Church passed away, and – as a result of the state-court injunction – Appellants were unable to gather for a memorial service. App. 053, ¶126. Thus, not only has the state-court injunction prohibited Appellants from religious services, but now has prohibited them from exercising their religious beliefs to properly mourn the dead. App. 053, ¶126. As in *Antigone*, there is now “tension between the King’s law – a formal edict that prohibited the burial of Antigone’s brother Polynices – and the unwritten law of the Gods that mandated a proper burial so as to fulfill a duty to honor and mourn the dead.” *United States v. Hoffman*, 436 F. Supp. 3d 1272, 1278 n.3 (D. Az. 2020).

Coastal Family Church and its elders resorted to live streaming religious services, despite being uncertain if the state-court injunction permits a small group to enter the facility to broadcast a remote religious service. App. 054, ¶128. Even if a small group of people were authorized to enter the facility to broadcast a remote religious service, which is not certain, App. 054, ¶129, “who is to say that every member of the

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<sup>1</sup> See Sophocles, *Antigone*, *The Complete Greek Tragedies*, D. Greene & R. Lattimore 162-209 (E. Wyckoff ed. 1954).

congregation has access to the necessary technology to make that work.” *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610, 615 (6th Cir. 2020). Moreover, a Florida circuit court has no authority to “say that every member of the congregation must see it as an adequate substitute for what it means when ‘two or three gather in my Name.’” *Id.* (quoting *Matthew* 18:20). As the Supreme Court has recognized, “remote viewing [of religious worship services] is not the same as personal attendance.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 16, 19 (2020). Appellants “reinforce their faith and their bonds with the faithful through religious assemblies.” App. 054, ¶132 (quoting *On Fire Christian Ctr., Inc. v. Fischer*, 453 F. Supp. 3d 901, 912 (W.D. Ky. 2020).) “[T]he Greek word translated ‘church’ in our English versions of Christian scriptures is the word, ‘ekklesia,’ which literally means ‘assembly.’” App. 055, ¶133 (quoting *On Fire*, 453 F. Supp. 3d at 912.) Appellants lost that eternally significant assembly because of the state-court injunction. App. 055, ¶135.

Of course, “[i]t is true that [Plaintiffs] could believe in everything Easter teaches from their homes on Sunday. So too could the pilgrims before they left Europe. But the Pilgrims demanded more than that. And

so too does the Free Exercise Clause.” App. 055, ¶134 (quoting *On Fire*, 453 F. Supp. 3d at 912.) The First Amendment’s “promise is as important to the minister as for those ministered to, as vital to the shepherd as to the sheep. And it is as necessary now as when the Mayflower met Plymouth Rock.” App. 055, ¶134 (quoting *On Fire*, 453 F. Supp. 3d at 912.) Appellants have sacrificed that promise because of the state-court injunction. App. 055, ¶135. Appellants thus have no mechanism for effectual or otherwise adequate relief to correct the unconstitutional infringements on their First Amendment liberties except for injunctive relief from this Court, as even a declaratory judgment would not prevent the threat of contempt against them for violating an injunction entered in a case to which they were not a party. App. 055, ¶136.

**C. Appellants have suffered, are suffering, and will continue to suffer irreparable harm.**

The state-court’s injunction is imposing unconstitutional and unconscionable infringements on Appellants’ religious liberty. App. 055, ¶137. As a result of the state-court injunction, Appellants have been forced to cease any “public assembly” that a third-party deems to be a religious assembly. App. 056, ¶138. As a result of the state-court injunction Appellants have been forced, on an emergency basis, to inform

fellow worshippers that a court in Florida had prohibited them from gathering together for religious worship. App. 056, ¶139. As a result of the state-court injunction, Appellants have been forced to inform their congregants that a Florida court's order now prohibits them from gathering for the reading of Scripture, prayer, the singing of hymns, communal worship, communion, fellowship, or any other form of religious assembly. App. 056, ¶140. As a result of the state-court injunction, Appellants have been forced to inform the family of a congregant that passed away, that they are unable to hold a memorial service at the church. App. 056, ¶141.

As a result of the state-court injunction, Appellants have been forced to relocate a Christian marriage event scheduled for February 14, 2026, at the Church planned for approximately 160 individuals who reserved and confirmed to attend the event at the Church. App. 056, ¶142. As a result of the state-court injunction, Appellants were forced to relocate or cancel men's breakfast events, young adult ministry meetings, youth ministry meetings, weekly Bible school programs, and Bible studies. App. 056, ¶143. As a result of the state-court injunction against State-Court Defendant Pastor Palmer, the elders have been unable to

meet in the Church to oversee any religious assembly. App. 056, ¶144. As a result of the state-court injunction, Appellants have been forced to sacrifice months of Sundays of cherished religious worship services and have lost that eternally significant time. App. 057, ¶145. As a result of the state-court injunction, Florida police officers have showed up to the Church to enforce the state-court injunction on at least two occasions. App. 057, ¶146. The free speech, assembly, and religious exercise rights of Appellants have already been harmed and significantly chilled by the state-court injunction. App. 057, ¶147. Appellants' irreparable harm is continuing and, in fact, increasing as each Sunday passes, especially as Good Friday (April 3) and Easter Sunday (April 5, 2026), which is the most spiritually significant and holy day for Christians, including Appellants, have come and gone with no relief and no end in sight. App. 057, ¶148.

If Appellants even attempt to enjoy their rights to assembly, speech, or religious exercise, they face a credible threat of the extraordinary weight of contempt, and the credible threat of subjecting state-court Defendant Palmer to contempt resulting from the state-court injunction. App. 057, ¶149. If the Appellants were to speak or teach or engage in

religious exercise at Flagler Square, it would cause their Senior Pastor to be held in contempt of court pursuant to the state-court injunction against state-court Defendant Pastor Palmer. App. 057, ¶150. Despite not being party to the state-court proceeding and not named defendants against whom the state-court injunction, Appellants are restrained and chilled in their First Amendment rights because of the state-court injunction and similarly face the threat of contempt of the state-court injunction. App. 057, ¶151. No person – including elders and congregants of a church – should be forced to choose between speech, assembly, and/or religious exercise and contempt.

## **II. Procedural History**

Appellants instituted this action on March 25, 2026, with the filing of a Verified Complaint and Motion for Temporary Restraining Order and Preliminary Injunction. App. 004 (dkt. 1, 2). The next day, the district court denied Appellants' emergency motion for temporary restraining order and preliminary injunction and dismissed the complaint without prejudice. App. 016–019. Appellants filed a First Amended Verified Complaint on April 2, 2026, App. 021–081, and simultaneously sought an emergency temporary restraining order and preliminary injunction. App. 006 (dkt. 13). The next day, the district court again denied Appellants'

Motion for Temporary Restraining Order and Preliminary Injunction. App. 088–091. On May 4, 2026, Appellants timely noticed their appeal to this Court. App. 093.

### **STANDARD OF REVIEW**

In general, this Court reviews the denial of a preliminary injunction for abuse of discretion. *Otto v. City of Boca Raton*, 981 F.3d 854, 860 (11th Cir. 2020) (quoting *Siegel v. LePore*, 234 F.3d 1163, 1175 (11th Cir. 2000) (en banc). Further, the Court “review[s] only for clear error the district court’s underlying factfindings,” *Yorktown Sys. Grp. Inc. v. Threat Tec LLC*, 108 F.4th 1287, 1293 (11th Cir. 2024), and “review[s] *de novo* its legal conclusions.” *Id.* The district court’s “application of law to the facts . . . is subject to *de novo* review.” *Pope v. Hightower*, 101 F.4th 1382, 1383 (11th Cir. 1996). “[I]n the preliminary injunction context, a district court abuses its discretion where the decision rests upon a misapplication of the law to the facts,” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1096 (11th Cir. 2004), or “applies an incorrect legal standard.” *Id.* Additionally, the district court abuses its discretion when its decision “imposes some harm, disadvantage, or restriction upon someone that is

unnecessarily broad or does not result in any offsetting gain to anyone else or society at large.” *Id.*

Where—as here—the appeal involves questions of Appellants’ First Amendment rights, this Court has “a constitutional duty to conduct an independent examination of the record as a whole, without deference to the trial court.” *Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Grp. of Boston*, 515 U.S. 557, 567 (1995). *See also Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (“[I]n cases raising First Amendment issues we have repeatedly held that an appellate court has an obligation to make an independent examination of the whole record in order to ensure that the judgment does not constitute a forbidden intrusion into the field of free expression.”). “The requirement of independent appellate review is a rule of federal constitutional law” and arises “because the reaches of the First Amendment are ultimately defined by the facts it is held to embrace, and we must thus decide for ourselves whether a given course of conduct falls on the near or far side of the line of constitutional protection.” *Hurley*, 515 U.S. at 567. *See also Eiland v. City of Montgomery*, 797 F.2d 953, 957 n.5 (11th Cir. 1986) (“in reviewing factual findings in First Amendment case, court uses an

independent examination of the record and is not bound by the clearly erroneous standard” (citing *McMullen v. Carson*, 754 F.2d 936, 938 (11th Cir. 1985)).

To obtain a preliminary injunction, Appellants must show they are likely to succeed on the merits, they are likely to suffer irreparable harm absent injunctive relief, and that the balance of equities and public interest favor an injunction. *See Otto*, 981 F.3d at 860 (citing *Siegel*, 234 F.3d at 1176). Appellants easily satisfied these requirements both factually and legally, and the district court’s denial of a preliminary injunction was an abuse of discretion and should be reversed.

### **SUMMARY OF THE ARGUMENT**

Appellants are fully cognizant that a judge “should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption,” *Pierson v. Ray*, 386 U.S. 547, 553 (1967), but circumstances do arise where—as here—Article III courts are required to adjudicate claims arising from state-court orders prohibiting expressive activities constitutionally protected under the First Amendment. *See, e.g., Alexander v. United States*, 509 U.S. 544 (1993); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Near v.*

*Minnesota*, 283 U.S. 697 (1931); *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753 (1994); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957); *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539 (1976); *National Socialist Party of Am. v. Skokie*, 432 U.S. 43 (1977); *Carroll v. President & Com’rs of Princess Anne*, 393 U.S. 175 (1968); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). As Justice Scalia opined in the concurrence in *Madsen*, the Supreme Court “has repeatedly struck down speech-restricting injunctions,” including those issued by state courts. 512 U.S. at 798 . The same result should have obtained here, and the district court’s contrary conclusion was in error.

This Court’s precedent permits Section 1983 claimants in federal court against a state-court judge in the judge’s official capacity to obtain injunctive relief against that court’s injunction that affects non-parties. *See Cheffer v. McGregor*, 6 F.3d 705 (11th Cir. 1994).<sup>2</sup> In fact, in *Cheffer*, the first named defendant was Robert McGregor, Florida Circuit Judge

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<sup>2</sup> The district court held that *Cheffer* had been vacated, so its precedential value is zero. App. 089. But *Cheffer* was vacated not because the injunction against a state-court injunction was improper, but because the Supreme Court of the United States had issued its own injunction against the state-court’s order that constituted a prior restraint. Thus, *Cheffer* does, indeed, provide this Court with significant authority for the relief Appellants are seeking in this matter. *See infra* Section II.

for the 18th Judicial Circuit. When a state-court injunction restrains the constitutionally protected activities of non-parties, such as it does to Appellants' here, the Court is required to intervene to prevent such irreparable harm to Appellants' irreparable constitutional injuries. *Cheffer*, 6 F.3d at 708.

In each of the cases cited *supra*, the Article III tribunal was faced with a court injunction imposing a prior restraint on activities and expression unquestionably protected by the First Amendment. And when presented with such an unconstitutional order, the court has “a virtually unflagging obligation to hear and resolve questions properly before it.” *FBI v. Fikre*, 601 U.S. 234, 240 (2024). Exercising that virtually unflagging obligation requires adjudication of state-court injunctions forbidding the exercise of First Amendment activity prior to it occurring. *Alexander*, 509 U.S. at 550 (“*Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.*” (emphasis added)). In fact, when faced with a near identical challenge to a state-court injunction, the Supreme Court has explicitly noted the Article III obligation to determine “the constitutionality of the state court’s

injunction.” *Madsen*, 512 U.S. at 762. *See also Org. for a Better Austin*, 402 U.S. at 415 (“We granted the writ in this case to consider the claim that an order of the Circuit Court of Cook County, Illinois, enjoining petitioners from distributing leaflets anywhere in the town of Westchester, Illinois, violates petitioners’ rights under the Federal Constitution.”). Here, Appellants have the same right to be present at the Church for religious worship services as the counselors had the right to speak in *Madsen* and the leafleters have in *Austin*.

Appellants’ appeal to this Court likewise begs for the Court to resolve the constitutionality of a state-court injunction prohibiting them from assembling together to exercise their sincerely held religious beliefs and First Amendment right to religious worship services, speech, and expression. On January 23, 2026, the state court issued a temporary injunction shuttering the doors of Coastal Family Church and forcing the elders of Coastal Family Church, on an emergency basis to inform each congregant that a Florida court had prohibited them from gathering together on Sunday for religious services, from reading the Scripture, praying, singing hymns, communal worship, the taking of communion, fellowship, and even holding a memorial service for a deceased member

of the Church. *See* App. 083–085. Each of those harms is independently constitutionally irreparable, and each of them is continuing and will continue absent this Court’s reversal of the district court.

In its prayer for relief, *see* App. 069–070, Appellants sought a temporary restraining order and preliminary injunction, restraining enforcement the temporary injunction (“the state-court injunction”), which prohibits Appellants from all assembly, speech, and religious exercise *even though they are not parties to the proceeding in which the injunction was issued*. The state-court’s injunction, enjoining Appellants from engaging in religious worship services and other activities protected by the First Amendment, “effectively bar[s] many from attending religious services [and] strike[s] at the very heart of the First Amendment’s guarantee of religious liberty.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19–20 (2020). As a result of the state-court injunction—backed by the overwhelming power of contempt—the doors of Appellants’ Church are shuttered, the lights are dim, and the eternal flame of Appellants’ religious beliefs temporarily snuffed out. Appellants’ pastor and worship leaders are muzzled. Appellants’ ministry to the most vulnerable in the community is prohibited. Appellants’

communal obedience to Scripture’s command to not forsake the assembly of themselves together is outlawed. And Appellants’ religious worship services banned. *This is unacceptable under the First Amendment.* A more egregious violation of the First Amendment is difficult to fathom.

“There is an old saying that a picture is worth a thousand words.” *Reynolds v. Belk, Inc.*, -- So.3d --, 2025 WL 3685549, \*1 (Fla. 5th DCA Dec. 19, 2025). Below is the scene in the parking lot of Coastal Family Church:



App. 043, ¶70; *see also* App. 010. In the parking lot of a Florida church stood a property manager with three police officers that had come to ensure that the state-court injunction that prohibited religious worship

services was being followed. App. 042, ¶67. “It is no exaggeration to say that, since its founding, the United States has abhorred the notion that governments may constrain a citizen’s right to practice one’s faith, *let alone break up a church meeting, seize religious materials, and incarcerate all of the worshippers.*” *Shi v. U.S. Attorney Gen.*, 707 F.3d 1231, 1236 (11th Cir. 2013) (emphasis added). The United States certainly abhors it. The First Amendment abhors it. But the state-court’s injunction astoundingly permitted (as demonstrated by the photo *supra*) police officers wearing the coercive badge of the State to “bust[] up the religious meeting” and allowed “the policed [to] describe[] the religious meeting itself as illegal.” *Id. This cannot continue.*

In a Republic birthed on the will to be free and founded upon the idea of religious freedom, police were called to ensure religious freedom was not exercised. As a result of the state-court injunction, “the hand of the law [was] laid on the should of a minister,” in Florida for the desiring to engage in religious exercise, religious worship services, and ministry. *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953). The First Amendment plainly prohibits that, and it is not “in the competence of the court under our constitutional scheme to approve, disapprove, classify, regulate, or in

*any manner* control sermons delivered at religious meetings.” *Id.* The district court’s decision denying injunctive relief against a state-court order that permits all of this unconstitutional nonsense must be reversed.

As the Supreme Court has stated, “No person can be punished for entertaining or professing religious beliefs or . . . *for church attendance.*” *Everson v. Bd. of Educ. of Ewing Tp.*, 330 U.S. 1, 15 (1947) (emphasis added). The state-court injunction does precisely that, and Appellants have suffered, are suffering, and will continue to suffer unconstitutional injury as a result. App. 055–057, ¶¶137–153.

Appellants have suffered, are suffering, and will continue to suffer the irreparable constitutional harm by being forced to turn away religious congregants, visitors, and new Believers in violation of their belief that Scripture requires letting in “whosoever will” come, App. 037, ¶44 (quoting *Revelations* 22:17); by being forced to turn away those exploring Christianity for the first time in violation of their belief that Scripture requires them to “[a]ccept one another, then, just as Christ accepted you, in order to bring praise to God,” App. 037, ¶45 (quoting *Romans* 15:7); by being forced to cancel memorial services for congregants that have passed away, men’s and women’s ministry events,

young adult ministry meetings, youth ministry meetings, weekly bible school programs, and Bible studies, App. 038, ¶46; by being forced to “forsake the assembling of themselves together” in violation of their religious beliefs, App. 039, ¶51 (quoting *Hebrews* 10:25); and by being forced to turn away mourners seeking to properly honor their loved one’s passing, also infringing their sincerely held religious beliefs that “[p]recious in the sight of the Lord is the death of His saints.” App. 039, ¶53 (quoting *Psalms* 116:15).

Every bit of this injury is not only eternally significant to Appellants, but it is constitutionally irreparable. Indeed, “[t]here can be no question that the challenged [state-court injunction], if enforced, will cause irreparable harm.” *Catholic Diocese*, 592 at 19. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitute irreparable injury.” *Elrod. v. Burns*, 427 U.S. 347, 373 (1976). And, when “the great majority of those who wish to attend [Coastal Family Church] will be barred, *Catholic Diocese*, 592 U.S. at 19, as is true here, irreparable harm is unquestionable.

Though arising in very different circumstances, the Supreme Court was faced with a host of government orders effectuating the same

prohibition that the state-court injunction does here—barring people from attending religious worship services while permitting similarly situated non-religious assemblies to meet without restriction. In each of those instances, the Supreme Court struck down such state orders. *E.g.*, *Catholic Diocese*, 592 U.S. 14; *Tandon v. Newsom*, 593 U.S. 61 (2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021); *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716 (2021); *Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021); *Gish v. Newsom*, 141 S. Ct. 1290 (2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2020); *High Plains Harvest Church v. Polis*, 141 S. Ct. 527 (2020); *Robinson v. Murphy*, 141 S. Ct. 972 (2020). As Justice Gorsuch stated, “[i]t is time—past time—to make plain that . . . there is no world in which the Constitution tolerates [government orders allowing non-religious assemblies] but shutter churches[.]” 592 U.S. at 27 (Gorsuch, J., concurring).

The district court’s decision was in error. It ignored binding Supreme Court precedent, mischaracterized Appellants’ claims against the state-court injunction, ignored the presumptively unconstitutional nature of the state-court’s injunction against religious worship services,

and ignored the rampant constitutional infirmities of the state-court's injunction prohibiting religious worship services, speech, and assembly. The district court should be reversed, and the matter remanded for entry of a preliminary injunction.

## ARGUMENT

### **I. Appellants are entitled to a preliminary injunction under Section 1983 because their alternate ground for declaratory relief does not provide effectual relief against the state-court's injunction against their religious worship services.**

The primary reason for the district court's denial of a preliminary injunction below was that Appellants had purportedly failed to establish that declaratory relief was not available to remedy their injuries. App. 090. Specifically, the district court held that because Appellants had included—as an alternative form of relief—declaratory judgment against the state-court's injunction, a preliminary injunction against it was not permissible under Section 1983. App. 090. The district courts' decision was incorrect for several reasons.

First, the plain text of Section 1983 permits injunctive relief against the state-court's injunction prohibiting Appellants' religious worship services where declaratory relief provides ineffectual relief or is “unavailable” to correct the injuries currently inflicted on Appellants.

Second, the fact that declaratory relief was pleaded as an alternative form of relief is a byproduct of the rules permitting alternative pleading—not a statement that it remains available or adequate to provide effectual relief to Appellants’ ongoing and irreparable constitutional injury. Third, the district court erred in finding that pleading alternative relief necessarily means that such relief is adequate. The district court’s decision, therefore, constitutes an abuse of discretion because it is “misapplication of the law to the facts,” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1096 (11th Cir. 2004), and “applies an incorrect legal standard.” *Id.* The district court should be reversed.

**A. Section 1983 permits injunctive relief against judicial officers where—as here—declaratory relief is unavailable to redress their ongoing and irreparable injuries.**

The plain text of Section 1983 provides that a preliminary injunction may be obtained against a judicial officer for decisions reached in performance of judicial duties if declaratory relief is not otherwise available. 42 U.S.C. §1983 (“in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”). *See Bolin v. Story*, 225

F.3d 1234, 1242 (11th Cir. 2000) (noting that injunctive relief is an available remedy against a state-court judge if declaratory relief is unavailable).

**B. The fact that declaratory relief was pleaded as an alternative does not equate to declaratory relief being available to redress Appellants’ ongoing and irreparable injuries to their cherished First Amendment right to religious worship services.**

The primary thrust of the district court’s decision below is that because declaratory relief was pleaded as an alternative form of relief it is available and precludes Appellants’ request for an injunction against the state-court injunction prohibiting their religious worship services. App. 090. This conclusion ignores both the context and history surrounding Section 1983’s amendment in 1996 and also the purpose behind alternative forms of relief. The district court’s conclusion that inconsistent pleading undermines Appellants’ claim for injunctive relief is incorrect. *See United Tech. Corp. v. Mazer*, 556 F.3d 1260, 1273 (11th Cir. 2009) (“we are not troubled by what the district court saw as inconsistent allegations. Rule 8(d) of the Federal Rules of Civil Procedure expressly permits the pleading of both alternative and inconsistent claims.”). And this Court has specifically recognized that alternative

pleading is permitted, “*even if it would be impossible for both [forms of relief] to be simultaneously [available].*” *Id.* at 1274 (emphasis added).

The reasons for this are simple. First, the 1996 amendment to Section 1983 in the Federal Courts Improvement Act was intended only to address the Supreme Court’s blanket allowance for injunctions in all cases against a state-court judge. *See, e.g., Bolin*, 225 F.3d at 1242. As the Third Circuit recognized, the 1996 Amendment limits injunctive relief to circumstances where—as here—“declaratory relief is unavailable or inadequate.” *Brandon E. ex rel. Listenbee v. Reynolds*, 201 F.3d 194, 198 (3d Cir. 2000) (emphasis added). *See also Davis v. Graves*, 2016 WL 4493845, \*2 (C.D. Ill. Aug. 26, 2016) (same); *Wiesmueller v. Nettesheim*, 2015 WL 3872297, \*4 (E.D. Wis. June 3, 2015) (same); *Mouratidis v. Wolf*, 2023 WL 2025035, \*3 (E.D. Penn. Feb. 15, 2023) (same); *Allen v. Bello*, 2016 WL 1670927, \*12 (D.N.J. Apr. 27, 2016) (same); *Watson v. Smith*, 2026 WL 927692, \*4 (E.D. Penn. Apr. 6, 2026) (same). In short, Section 1983 permits injunctive relief against a state-court injunction where—as here—declaratory relief is *either* unavailable or *otherwise inadequate*. The district court’s holding that “claiming that

it is an inadequate remedy does not establish that the remedy is unavailable,” App. 090, is incorrect and should be reversed.

This conclusion inevitably follows from the purpose behind alternative forms of relief. The plain language of Rule 8 makes clear that alternative pleading is permitted. *See* Fed. R. Civ. P. 8(d)(2) (“A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count . . . or in separate ones.”). *See also DeRoy v. Carnival Corp.*, 963 F.3d 1302, 1308 (11th Cir. 2020) (“Certainly, pleading in the alternative is permissible in federal court.”). And the fact that two forms of relief may be wholly inconsistent is of no moment to a plaintiff’s ability to plead them. Fed. R. Civ. P. 8(d)(3) (“A party may state as many separate claims or defenses as it has, *regardless of consistency.*” (emphasis added)). Importantly, “[i]f a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.” Fed. R. Civ. P. 8(d)(2). Indeed, “[i]t is a well-settled rule of federal procedure that plaintiffs may assert alternative *and contradictory* theories of liability.” *Adinolfe v. United Techs. Corp.*, 768 F.3d 1161, 1175 (11th Cir. 2014) (emphasis added).

The reason behind the rule is straightforward: a plaintiff should not be forced to leave potentially merited claims on the sideline for fear that an inconsistent claim would have bearing on the merits of a different claim arising from the same operative facts. Indeed, “[t]he pleading of alternative jurisdictional bases is a common practice.” *State Establishment of Agr. Prod. Trading v. M/V Wesermunde*, 770 F.2d 987, 990 n.3 (11th Cir. 1985). Thus, Appellants were well within their right to assert declaratory relief as a back-up claim in the event courts of competent jurisdiction concluded that injunctive relief was unavailable. As this Court has recognized, “frequently a party, after a reasonable inquiry and for proper purposes, must assert contradictory statements when he or she is legitimately in doubt about the factual background of the case or the legal bases that underlie affirmative recovery.” *Savage v. Secure First Credit Union*, 2016 WL 2997171, \*1 (11th Cir. May 25, 2016) (quoting 5 Charles Alan Wright & Arthur Miller, *Federal Prac. & Proc.* §1283 (3d ed. 2005)).

Judicial economy and the preference for liberal pleading standards are both bolstered by permitting Appellants to do precisely what they have done here. *Jones Creek Investors, LLC v. Columbia Cnty.*, 2013 WL

1338238, \*16 (S.D. Ga. Mar. 28, 20130) (“Judicial economy supports [plaintiffs’] alternative pleading”). Indeed, were the rule to “preclude plaintiffs from raising . . . claims in the alternative would erroneously require [plaintiffs] to resort to piecemeal litigation or otherwise unfair procedures.” *San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323, 346 (2005). That Appellants pleaded an alternative form for declaratory relief in the event injunctive relief was declared impermissible does not mean that declaratory relief is adequate to address their ongoing and irreparable constitutional injuries. *It isn’t*.

An adequate remedy requires redress sufficient to alleviate the injury alleged. As a matter of black letter law, “the nature of the remedy is to be determined by the nature and scope of the constitutional violation.” *Missouri v. Jenkins*, 515 U.S. 70, 88 (1995). *See also Lewis v. Casey*, 518 U.S. 343, 357 (1996) (same). A declaration that the state-court injunction violates the First Amendment is inadequate to mandate the state-court rescind it or immediately allow Appellants to resume exercising their fundamental rights to religious worship services, speech, and assembly despite the injunction against it. But that is what is required for the remedy to be adequate for Appellants here. *See Milliken*

*v. Bradley*, 418 U.S. 717, 746 (1974) (“But the remedy is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct.”). Only an injunction can do so here because only an injunction prohibiting enforcement of the state-court injunction restraining Appellants’ right to religious worship services would restore Appellants to the position they occupied prior to the discriminatory state-court injunction and allow their religious worship services, speech, and assembly to resume without fear of contempt.

For a remedy to be adequate, “the federal-court decrees must *directly address* and relate to the constitutional violation itself.” *Milliken v. Bradley*, 433 U.S. 267, 282 (1977). Where a constitutional violation of this magnitude has occurred by virtue of the state-court injunction, the remedy must be “tailored to the condition that offends the Constitution.” *Id.* Only an injunction can effectuate that relief for Appellants.

The difference between an injunction and declaratory relief demonstrates the ineffectual nature of declaratory relief here. *Steffel v. Thompson*, 415 U.S. 452, 463 (1974) (noting that “declaratory relief . . . is a less harsh and abrasive remedy than the injunction”). The purpose

behind declaratory relief is to “declare the rights and other legal relations of any interested party seeking such declaration.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). As to the scope of redress, a declaratory judgment is “nonobligatory,” *Cambridge Christian Sch., Inc. v. Fla. High Sch. Ath. Assoc., Inc.*, 942 F.3d 1215, 1251 (11th Cir. 2019), and “does not provide any express direction to [the defendant] that is presently enforceable by contempt.” *Stafford Transport of Michigan, Inc. v. Crum & Foster Spec. Ins. Co.*, 2024 WL 691339, \*1 (11th Cir. Feb. 20, 2024) (quoting *James River Ins. Co. v. Ultratec Spec. Effects Inc.*, 22 F.4th 1246, 1252 (11th Cir. 2022)).

A preliminary injunction, by contrast, is “an equitable decree compelling obedience under the threat of contempt.” *Int’l Longshoremen’s Ass’n, Local 1291 v. Phil. Marine Trade Ass’n*, 389 U.S. 64, 75 (1967). Its purpose is to “restore, and preserve, the *status quo ante*, *i.e.*, the situation that existed between the parties immediately prior to the events that precipitated the dispute.” *FHR TB, LLC v. TB Isle Resort, LP*, 865 F. Supp. 2d 1172, 1193 (S.D. Fla. 2011). Injunctions are “enforced through the trial court’s civil contempt power,” to ensure a defendant is

“comply[ing] with the decree’s mandates.” *Reynolds v. Roberts*, 207 F.3d 1288, 1298 (11th Cir. 2000).

The distinction is critical to whether declaratory relief is available *and adequate*. As the Supreme Court recognized in *Milliken*, 418 U.S. at 746, the remedy must put a plaintiff back where he was before the discrimination and effectively restore his rights. Declaratory relief would do no such thing in this instance. *A preliminary injunction would*. Indeed, only a preliminary injunction restoring the status quo *ante* and affirmatively mandating compliance eliminating the unconstitutional prior restraint on Appellants’ First Amendment rights to religious worship services, speech, and assembly can completely and effectively redress Appellants’ First Amendment injuries. As such, the district court’s decision that pleading alternative forms of relief foreclosed the availability of an injunction here is in error and must be reversed.

**C. The district court erred in finding that pleading alternative forms of potential relief necessarily means that alternative relief is adequate to address Appellants’ ongoing and irreparable injuries.**

As the court said in *Wiesmueller*, where declaratory relief is pleaded as an alternative form of relief—that does not preclude the finding that injunctive relief is barred or that declaratory relief is available. 2015 WL

3872297, at \*4. As a practical matter, of course, claims against judges and their orders are sparse and warranted only in unique circumstances. But that does not preclude a finding that injunctive relief is available against a state-court injunction that violates fundamental rights. Indeed, there have been a host of federal court decisions issuing injunctions against state judicial officers for decisions made in their judicial capacity. This is true both before the 1996 amendments to Section 1983, *e.g.*, *Alexander v. United States*, 509 U.S. 544 (1993); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Near v. Minnesota*, 283 U.S. 697 (1931); *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753 (1994); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976); *National Socialist Party of Am. v. Skokie*, 432 U.S. 43 (1977); *Carroll v. President & Com'rs of Princess Anne*, 393 U.S. 175 (1968); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), *FOCUS v. Allegheny Cnty. Ct. of Common Pleas*, 75 F.3d 834 (3d Cir. 1996), and after the 1996 amendments. *E.g.*, *Dow Jones & Co., Inc. v. Kaye*, 256 F.3d 1251 (11th Cir. 2001) (noting that injunctions against state judges are available, but declining to address the merits of an injunction against speech because the case had become moot).

**II. Appellants are likely to prevail on the merits of their First Amendment claims that the state-court injunction is a presumptively unconstitutional prior restraint on Appellants’ fundamental right to religious worship services.**

**A. The state court’s injunction prohibiting Appellants from gathering together for religious worship services is a presumptively unconstitutional prior restraint on speech, religious exercise, and assembly.**

Appellants are fully cognizant of that a judge “should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption,” *Pierson v. Ray*, 386 U.S. 547, 553 (1967), but circumstances do arise where—as here—Article III courts are required to adjudicate claims arising from state courts orders prohibiting expressive activities constitutionally protected under the First Amendment. *See, e.g., Alexander v. United States*, 509 U.S. 544 (1993); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Near v. Minnesota*, 283 U.S. 697 (1931); *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753 (1994); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957); *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539 (1976); *National Socialist Party of Am. v. Skokie*, 432 U.S. 43 (1977); *Carroll v. President & Com’rs of Princess Anne*, 393 U.S. 175 (1968); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982). As Justice Scalia opined in his concurrence in

*Madsen*, the Supreme Court “has repeatedly struck down speech-restricting injunctions,” including those issued by state courts. 512 U.S. at 798. The same result should obtain here.

This Court’s precedent permits Section 1983 claims in federal court against a state-court judge in the judge’s official capacity to obtain injunctive relief against an injunction that affects non-parties. *See Cheffer v. McGregor*, 6 F.3d 705 (11th Cir. 1994). In fact, in *Cheffer*, the first named defendant was Robert McGregor, Florida Circuit Judge for the 18th Judicial Circuit. When a state-court injunction restrains the constitutionally protected activities of non-parties, such as it does to Appellants here, the Court is required to intervene to prevent such irreparable harm. *Cheffer*, 6 F.3d at 708.

In each of the cases cite *supra*, the Article III tribunal was faced with a court injunction imposing a prior restraint on activities and expression by a non-party unquestionably protected by the First Amendment. And when presented with such an unconstitutional order, the court has “a virtually unflagging obligation to hear and resolve questions properly before it.” *FBI v. Fikre*, 601 U.S. 234, 240 (2024). Exercising that virtually unflagging obligation requires adjudication of state-court injunctions

forbidding the exercise of First Amendment activity prior to it occurring. *Alexander*, 509 U.S. at 550 (“*Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.*” (emphasis added)). In fact, when faced with a near identical challenge to a state-court injunction, the Supreme Court has explicitly noted the Article III obligation to determine “the constitutionality of the state court’s injunction.” *Madsen*, 512 U.S. at 762. *See also Org. for a Better Austin*, 402 U.S. at 415 (“We granted the writ in this case to consider the claim that an order of the Circuit Court of Cook County, Illinois, enjoining petitioners from distributing leaflets anywhere in the town of Westchester, Illinois, violates petitioners’ rights under the Federal Constitution.”).

**1. Judicial orders forbidding protected First Amendment activity are classic examples of prior restraints that binding precedent dictates cannot withstand scrutiny.**

The district court held that Appellants failed to make any showing that of any likelihood of success on their First Amendment claims under Section 1983. App. 089. This is incorrect. Appellants are likely to prevail on their claim that the state-court injunction prohibiting their religious

worship services operates as an unconstitutional prior restraint. As the Supreme Court has recognized, “[t]he term prior restraint is used to describe certain administrative and judicial orders *forbidding* certain communications when issued in advance of the time that such communications are to occur.” *Alexander v. United States*, 509 U.S. 544, 500 (1993) (emphasis original). Specific to the state-court injunction at issue here, “[t]emporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.” *Id.* (emphasis added)).

Critically, “[i]njunctive carry greater risks of censorship and discriminatory application than do general ordinances,” and thus “require more stringent application of general First Amendment principles.” *Madsen*, 512 U.S. at 765 (emphasis added; cleaned up). Part of the state-court injunction at issue in *Madsen* was a “blanket ban” on certain activity protected by the First Amendment. *Id.* at 773. The Supreme Court held that such blanket prohibitions “burden more speech than necessary to achieve the purpose” alleged and held that “[t]his [blanket ban] provision of the injunction violates the First Amendment.” *Id.* Referencing another provision of the state-court injunction, the Supreme

Court held that “it is difficult, indeed, to justify a prohibition on *all*” activity protected by the First Amendment “without burdening more speech than is necessary.” *Id.* at 774 (emphasis original). And because the injunction imposed a blanket prohibition that captured constitutionally protected speech and expression, the Court invalidated those portions of the state-court injunction. *Id.*

Simply put, a state-court injunction “issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order,” *Carroll v. President & Com’rs of Princess Anne*, 393 U.S. 175, 183 (1968), and “tailored as precisely as possible to the exact needs of the case.” *Id.* A blanket prohibition does not qualify and must be struck down. *See Youngdahl v. Rainfair, Inc.*, 355 U.S. 131, 138 (1957). Here, the state-court injunction imposes a blanket prohibition on religious assembly, religious worship services, religious speech, and religious exercise. App. 085 (“Until resolution of this case Defendant is enjoined effective immediately from utilizing Unit 1 as a place of public assembly.”). There is no world in which a total prohibition on activity protected by three separate clauses

of the First Amendment satisfies the requirements of the First Amendment's prior restraint doctrine.

Take particularly *CBS, Inc. v. Davis*, 510 U.S. 1315 (1994). There, the Supreme Court faced a “preliminary injunction entered by the Circuit Court for the Seventh Judicial District of South Dakota,” which prohibited a news outlet from airing footage. *Id.* at 1315. The plaintiff news outlet immediately appealed to the federal courts to prohibit enforcement of that injunction. *Id.* (“CBS . . . contends that the injunction constitutes an intolerable prior restraint.”). The state court (as here) held that “conventional prior restraint doctrine was inapplicable” and thus enjoined the constitutionally protected activities of the plaintiff. *Id.* at 1316. The Court, by contrast, noted that “[f]or many years it has been clearly established that any prior restraint on expression comes to this Court with a heavy presumption against its constitutional validity,” *id.* at 1317 (emphasis added), which includes state-court injunctions prohibiting constitutionally protected activities under the First Amendment. The Court stayed the state-court injunction in that case because “each passing day may constitute a separate and cognizable infringement of the First Amendment.” *Id.* Substitute Florida for South

Dakota and the cases are virtually indistinguishable, and the Court's action enjoining the unconstitutional prior restraint should be the same.

The state-court's injunction in this case forbids Appellants from engaging in the right to religious worship services, the right to assembly, the right to religious expression, and the right to religious exercise. Each of these is perforce protected by the First Amendment, and a blanket prohibition on Appellants' constitutionally protected rights is a blatantly unconstitutional prior restraint that must be enjoined by this Court.

**2. The district court's treatment of this Court's decision in *Cheffer v. McGregor* errs by ignoring that the state court injunction in that case was ultimately invalidated by the Supreme Court in *Madsen*.**

The district court held that this Court's decision *Cheffer* had been vacated, so its precedential value in the instant matter is zero. App. 089–90. This contention is incorrect factually and legally. First, *Cheffer* was vacated not because the injunction against a state-court injunction was improper. Rather, the Supreme Court of the United States subsequently issued its own decision on the merits regarding the state-court's order that constituted a prior restraint in *Madsen* and thus superseded the injunction this Court issued in *Cheffer*. In essence, *Madsen* affirmed the portions of *Cheffer* that are relevant to the instant claims, making

*Cheffer*'s analysis precedential as to the relevant claim before the Court here.

A comparison of this Court's decision in *Cheffer* and the Supreme Court's *Madsen* decision adjudicating the merits of the same state-court injunction reveals the remaining precedential value of this Court's decision in *Cheffer*. In *Cheffer*, this Court held that the state-court's injunction against speech in a traditional public forum operated a total prohibition on speech. 6 F.3d at 710. The Supreme Court, for its part, affirmed that determination in part and held that certain provisions of the state-court injunction violated the First Amendment. 512 U.S. at 771 (holding that one portion of the injunction "burdens more speech than necessary"); *id.* at 775 (holding that the 300-foot buffer zone violated the First Amendment).

Importantly, for the instant appeal, the most significant problems the Supreme Court found with the state-court injunction at issue in *Cheffer* and *Madsen* was that it imposed a blanket ban on protected First Amendment activity. *See* 512 U.S. at 773 ("the state court issued a blanket ban on all 'images observable.' This broad prohibition on all 'images observable' burdens more speech than necessary . . . This

provision of the injunction violates the First Amendment.”); *id.* at 775 (holding that a different provision of the state-court injunction violated the First Amendment because it represented a “broad ban on picketing.”).

The same is true of the state-court injunction at issue here. A state-court judge has issued an injunction against Appellants’ use of Coastal Family Church for religious worship services, religious speech, and religious assembly. App. 085 (“Defendant is enjoined effectively immediately from utilizing Unit 1 as a place of public assembly and is prohibiting from allowing public assemblies put on by any entity to occur there.”). This is the same blanket ban the Supreme Court held in *Madsen* was unlawful under the First Amendment.

Thus, *Cheffer* does, indeed, provide this Court with significant authority for the relief Appellants are seeking in this matter. Though the district court held that this Court’s *Cheffer* decision has zero value because it was vacated, App. 089, has a surface level appeal, it ignores the point Appellants were making below (and here). First, because the Court granted en banc review in *Cheffer*, the opinion was automatically vacated. 11th Cir. R. 40–11. It was not vacated because its merits were incorrect. Vacatur was merely a logistical reality of the operation of the

Court's rules. The order vacating the panel decision makes that clear. *See Cheffer v. McGregor*, 41 F.3d 1421, 1422 (11th Cir. 1994) (noting that the Court voted in favor of rehearing so “the above cause shall be reheard by this court sitting en banc. The previous panel opinion is hereby VACATED.”). It was operation of rules—not a merits rejection.

And vacated opinions may be cited for precedential value “when they have been validated” by the reviewing court, *Alvarado v. Bd. of Trustees of Montgomery Cmty. Coll.*, 848 F.2d 457, 459 (4th Cir. 1988), which *Cheffer* was in *Madsen*. Indeed, precedential value is dependent on whether the portion of the decision that was vacated has been reinstated or affirmed. *Friends of Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1218 (11th Cir. 2009). Leaving binding weight aside, the district court was and this Court is “free to give statements in a vacated opinion persuasive value if we think they deserve it.” *Id.* *See also Tallahassee NAACP v. Leon Cnty.*, 827 F.2d 1436, 1440 (11th Cir. 1987) (same); *United States v. Mejia-Duarte*, 780 F. App'x 730, 737 (11th Cir. 2019) (same).

Affording *Cheffer* the persuasive precedential value it deserves in light of *Madsen* is common in this Court, particularly since it was vacated

as a matter of procedure, not on criticism of its merits. *See Mejia-Duarte*, 780 F. App'x at 737 (“Because the opinion was vacated on grounds apart from the legal question before us today . . . we see no reason not to apply [it].”); *Jackson v. Ga. Dep't of Transp.*, 16 F.3d 1573, 1578 n.7 (11th Cir. 1994) (“Although the opinion in *Downing* was vacated on unrelated grounds and is not binding precedent on this Circuit, its reasoning does have persuasive value.”); *Proffitt v. Wainwright*, 685 F.2d 1227, 1266–67 (11th Cir. 1982) (“Although the Henry decision has been vacated by the Supreme Court on procedural grounds not relevant to this case, we find its reasoning persuasive and therefore adopt its analysis.”). Indeed, “a logical and well-reasoned decision,” such as *Cheffer* that was partially upheld on the relevant grounds by the Supreme Court in *Madsen*, “despite vacatur, is always persuasive authority.” *Gutter v. E.I. DuPont de Nemours & Co.*, 2001 WL 36086589, \*6 (S.D. Fla. Mar. 7, 2001).

**B. The state court’s injunction prohibiting Appellants’ religious worship services violates the Free Exercise Clause of the First Amendment.**

**1. The state court’s injunction prohibiting Appellants’ religious worship services is neither neutral nor generally applicable and is thus subject to strict scrutiny.**

The state-court injunction at issue here and the instant appeal are of grave importance to “the Nation’s essential commitment to religious freedom.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 524 (1993). The Free Exercise Clause “protects not only the right to harbor religious beliefs inwardly and secretly,” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022), but it also protects “the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’” *Id.* at 524 (quoting *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877 (1990)). *See also Lukumi*, 508 U.S. at 546 (same). “That the First Amendment doubly protects religious speech is no accident.” *Kennedy*, 597 U.S. at 524 “[G]overnment institutions, may not place unconstitutional burdens on religious exercise.” *Lukumi*, 508 U.S. at 545. The state-court injunction is precisely this type of burden.

“[A] plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not ‘neutral’ or ‘generally applicable.’” *Kennedy*, 597 U.S. at 525. As the Supreme Court unequivocally held in an appeal of similar prohibitions on religious gatherings, regardless of the purported emergency giving rise to the prohibitions on religious worship, “the Constitution cannot be put away and forgotten.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). “The restrictions at issue here, by effectively barring many from attending religious worship services, strike at the very heart of the First Amendment’s guarantee of religious freedom.” *Id.* The state-court’s injunction imposes a “restriction on in-person worship services [that] likely prohibits the free exercise of religion in violation of the First and Fourteenth Amendments.” *Roberts v. Neace*, 958 F.3d 409, 413 (6th Cir. 2020).

The state-court injunction is subject to strict scrutiny for violating the Free Exercise Clause. “[G]overnment regulations are not neutral or generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity

more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (emphasis original). Indeed, the state-court injunction “cannot be viewed as neutral because [it] single[s] out houses of worship for especially harsh treatment.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17 (2020).

As the text of the state-court injunction makes plain, there are several other non-religious uses that purportedly violate the alleged declaration at issue in the proceedings, but those violations were ignored and allowed to continue unabated. App. 083, ¶4. As the sworn testimony before the district court demonstrates, the plaintiff in the state-court proceedings targeted Appellants for their religious use of the property while ignoring non-religious assemblies that purportedly violate the same discriminatory restriction as well. App. 047–049, ¶¶92–97. The Fraternal Order of Police hosts non-religious assemblies and public gatherings in their facility on a weekly basis. App. 048, ¶¶93–94. Specifically, the Fraternal Order of Police hosts weekly bingo nights, HOA meetings, NRA classes, and Law Shield classes, and it offers its facilities for the rental of various public gatherings and assemblies. App. 048, ¶94. A consignment shop is located in the condominium unit, which

also violates the restrictions. App. 048, ¶95. Moreover, the plaintiff in the state-court proceedings, itself, has hosted or allowed others to host, flea markets, car shows, and other public assemblies in the condominium while targeting Appellants' religious worship services. App. 048, ¶97. The plaintiff in the state-court proceeding and the state-court's injunction ignores these non-religious uses while prohibiting Appellants' religious assembly. In other words, the state-court injunction "treats some comparable secular activities more favorably than religious exercise." *Tandon*, 593 U.S. at 63. The state-court injunction cannot stand. "[R]estrictions inexplicably applies to one group and exempted from another do little to further [the alleged] goals and do much to burden religious freedom." *Roberts*, 958 F.3d at 414.

And it is no answer to say that the state-court injunction may not have been motivated by religious bigotry. "The constitutional benchmark is government neutrality, not governmental avoidance of bigotry." *Id.* at 415 (cleaned up). "A law is not neutral and generally applicable unless there is "neutrality between religion and non-religion." And a law can reveal a lack of neutrality by protecting secular activities more than comparable religious ones." *Id.* (cleaned up; citations omitted).

Simply put, the state-court injunction ignored comparable secular activities—which are allowed to continue unabated—while enjoining constitutionally protected religious assembly, worship, and expression.

All of this requires the [state-court injunction] to satisfy the strictures of strict scrutiny. [It] cannot. No one contests that the orders burden sincere faith practices. Faith plainly motivates the worship services. And no one disputes the Church’s sincerity. Orders prohibiting religious gatherings, enforced by police officers telling congregants they violated a criminal law and by officers taking down license plate numbers, will chill worship gatherings.

*Roberts*, 958 F.3d at 417. This is precisely what happened at Coastal Family Church following the state-court injunction. App. 042–043, ¶¶70–71. The First Amendment demands more, and so, too, must this Court.

Because the state-court injunction is neither neutral nor generally applicable, it is subject to strict scrutiny, *Lukumi*, 508 U.S. at 546, which is “the most demanding test known to constitutional law,” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) As the Supreme Court said in *Tandon*, “[t]hat standard is not watered down; it really means what it says.” 593 U.S. at 64. The test is rarely passed. See *Burson v. Freeman*, 504 U.S. 191, 200 (1992) (“[W]e readily acknowledge that a law rarely survives such scrutiny . . . .”). This is not that rare case.

**2. The state court’s injunction prohibiting Appellants’ religious worship services fails strict scrutiny as a matter of law.**

**a. There is no universe in which a state court injunction prohibiting religious worship services serves a compelling government interest.**

There is no interest whatsoever, much less a compelling one, in prohibiting Appellants from gathering for religious worship services, religious assembly, and religious exercise when substantially similar non-religious assemblies are permitted. The state-court injunction “cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Reed v. Town of Gilbert*, 576 U.S. 155, 172 (2015) (quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002)). Simply put, because the state-court injunction “restricts only conduct protected by the First Amendment and fails to enact feasible measures to restrict other conduct producing substantial harm or alleged harm of the same sort, the interest given in justification of the restriction is not compelling.” *Lukumi*, 508 U.S. at 546–47. For that reason alone, the state-court injunction fails strict scrutiny.

**b. The state court’s universal prohibition on Appellants’ religious worship services is not the least restrictive means.**

Even if the state-court injunction was supported by some conceivable compelling interest, which it is not, it also fails strict scrutiny because it is not the least restrictive means. Total prohibitions on First Amendment speech, assembly, and religious exercise are substantially broader than any conceivable government interest could justify. *Bd. of Airport Comm’rs of City of L.A. v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987); *Shapero v. Kentucky Bar Ass’n*, 486 U.S. 466, 476 (1988) (holding that the First Amendment does not countenance “a total ban” on protected activity); *id.* at 468 (“[T]he State may not absolutely ban certain types” of First Amendment activity.”). *See also Knowles v. City of Waco*, 462 F.3d 430, 435 (5th Cir. 2006) (noting that complete prohibitions are “hardly tailored at all,” much less narrowly tailored).

In fact, under any standard of review—including appellate review of a state-court injunction like that at issue in this appeal—total prohibitions and blanket bans burden more speech than the First Amendment allows. *See Madsen*, 512 U.S. at 773 (“the state court issued a blanket ban on all ‘images observable.’ This broad prohibition burdens

more speech than necessary to achieve the purpose . . . . This provision of the injunction violates the First Amendment.”). As the Supreme Court noted, “it is difficult, indeed, to justify a prohibition al *all* [protected First Amendment activity] without burdening more speech than necessary.” *Id.* at 774 (emphasis original). Simply put, the state-court injunction’s total prohibition on religious worship services “cannot stand.” *Id.*

The Constitution simply does not permit blanket bans on First Amendment activity, and neither should this Court. In *Jews for Jesus*, the government tried—as the state-court injunction does here—to “prohibit *all* protected expression, purport[ing] to create a virtual ‘First Amendment Free Zone.’” 482 U.S. at 575. The restriction did “not merely regulate [First Amendment activity] . . . that might create problems such as congestion or the disruption of activities of those who use LAX.” *Id.* In other words, the prohibition represented “a sweeping ban” prohibiting all First Amendment activity in a certain location. “[I]t is obvious that such a ban cannot be justified” because “no conceivable government interest would justify such an absolute prohibition of speech.” *Id.* at 575 (emphasis added). The state-court injunction constitutes a total ban on religious exercise, speech, and assembly at Coastal Family Church, and

is therefore not the least restrictive means of achieving any purported interest.

**C. The state court’s injunction prohibiting Appellants’ religious worship services violates the Establishment Clause.**

The Establishment Clause prohibits the government from showing hostility towards religion. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). Additionally, “[g]overnment actions that favor certain religions ... convey to members of other faiths that ‘they are outsiders, not full members of the political community.’” *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Indus. Rev. Comm’n*, 605 U.S. 238, 248 (2025) (quoting *Santa Fe Independent Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000)).

Here, the face of the state-court’s injunction demonstrates that it singles out religion for disfavored treatment in violation of the Establishment Clause. *Compare* App. 085, *with* App. 047–048, ¶¶92–97. Hostility towards and disparate treatment of religious worship services plainly violates the Establishment Clause. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their

faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added). Where, as here, Appellants seek to be free from disparate treatment by the state-court injunction entered in a proceeding to which they are not parties, the very core of the Establishment Clause is at issue. “An attack founded on disparate treatment of “religious” claims invokes what is perhaps the central purpose of the Establishment Clause—the purpose of ensuring governmental neutrality in matters of religion.” *Gillette v. United States*, 401 U.S. 437, 449 (1971) (emphasis added). The Establishment Clause “affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility towards any.” *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984).

Simply put, “[t]he ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. . . . Neither can force nor influence a person to go to or to remain away from church against his will.” *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947) (emphasis added). The state-court’s injunction run roughshod over the triumvirate of this Court’s *Everson*, *Lynch*, and *Gillette* precedent. It cannot stand.

**II. Appellants have suffered, are suffering, and will continue to suffer irreparable constitutional injury as a result of the state court’s injunction prohibiting religious worship services.**

The district court wholly ignored the question of irreparable injury below. App. 088–091. “There is no question that the [state-court injunction], if enforced, will cause irreparable harm.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). Indeed, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). *See also Tandon v. Newsom*, 593 U.S. 61 (2021) (same). The ongoing violation of cherished First Amendment rights unquestionably constitutes irreparable injury. Indeed, “[t]he only area of constitutional jurisprudence where we have said that an on-going violation constitutes irreparable injury is the area of first amendment and right of privacy jurisprudence.” *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (quoting *Fla. Chapter of the Ass’n of Gen. Contractors of America v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)). That is “because of their intangible nature,” the harm “could not be compensated for by money damages; in other words, plaintiffs could not be made whole.” *Ibid.* Nothing will make

Appellants whole after the judicial assault that rendered their Church closed for months on end, but a preliminary injunction can keep it from continuing.

**III. The harm to the state in enforcing unconstitutional judicial injunctions prohibiting religious worship services is non-existent, and the balance of the equities therefore favors injunctive relief.**

An injunction in this matter will protect the very rights the Supreme Court has characterized as “lying at the foundation of a free government of free men.” *Schneider v. New Jersey*, 308 U.S. 147, 151 (1939). The granting of a preliminary injunction, enjoining enforcement of the state-court injunction will impose no harm to the State or anyone. Indeed, the State “is in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions.” *Legend Night Club v. Miller*, 673 F.3d 291, 302-03 (4th Cir. 2011). But, for Appellants, as noted above, even minimal infringements upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief. As such, there is no comparison between the irreparable loss of First Amendment freedoms suffered by Appellants absent a preliminary injunction and the non-existent interest the State has in enforcing an unconstitutional state-court injunction.

**IV. The public interest is best served by protecting Appellants' cherished First Amendment rights to religious worship services.**

“[I]njunctive protections protecting First Amendment freedoms are always in the public interest.” *Christians Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006); *see also Citizens United v. Gessler*, 773 F.3d 200, 218 (10th Cir. 2014) (same); *Index Newspapers LLC v. United States Marshals Service*, 977 F.3d 817, 838 (9th Cir. 2020) (same). This protection is *ipso facto* in the interest of the general public because “First Amendment rights are not private rights [but] rights of the general public [for] the benefits of all of us.” *Machesky v. Bizzell*, 414 F.2d 283, 288-90 (5th Cir. 1969) (citing *Time, Inc. v. Hill*, 385 U.S. 374 (1967)); *see also Connor v. Palm Beach Cnty.*, 1996 WL 438779, \*17 (S.D. Fla. 1996) (“The protection of constitutional rights is of the highest public interest [and] [p]rotecting First Amendment rights is *ipso facto* in the interest of the general public.”). “[T]he public has a profound interest in men and women of faith worshipping together [in church] in a manner consistent with their conscience.” *On Fire Christian Center, Inc. v. Fischer*, 453 F.Supp.3d 901, 914 (W.D. Ky. 2020).

## CONCLUSION

Because the district court's order ignored that Appellants' requested preliminary injunction was the only available and effectual relief to protect their cherished First Amendment rights to religious worship services, speech, and assembly, and because the state-court injunction at issue in this matter is a presumptively unconstitutional prior restraint on Appellants' First Amendment rights, violates the Free Exercise Clause and violates the Establishment Clause, the district court should be reversed and the matter remanded for entry of a preliminary injunction.

Respectfully submitted,

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/s/ Daniel J. Schmid  
Daniel J. Schmid

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of June, 2026, I caused a true and correct copy of the foregoing to be electronically filed with the Court. Service will be effectuated on all counsel of record via the Court's EFC/electronic notification system.

In addition, because counsel for Appellee has not appeared in either the district court or this Court, despite service of process, Appellant has also caused a true and correct copy of the foregoing brief to be physically served at the address of record for Appellee and the State Attorney for the Seventh Judicial Circuit in and for Flagler County, Florida, as well as copies to the Attorney General of Florida, with electronic copies also provided by the email address of record on the Florida State Bar website.

/s/ Daniel J. Schmid  
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